

# **EXHIBIT B**

To Declaration of Jolene Kramer In Support of Intervenor Local 265's  
Motion for Summary Judgment  
ACI v. City of Cincinnati  
Case No. 1:14-cv-00450-MRB

City of Cincinnati

GWM/B  
*[Signature]*

An Ordinance No. 114

- 2013

**MODIFYING** the provisions of Title III, "Financial, Personnel, Procurement and Real Property Procedures," of the Cincinnati Municipal Code by amending Sections 320-1-A, "Apprentice," 320-1-B1, "Bidder," 320-1-C1, "Construction Contract," 320-1-C2, "Contractor," 320-1-D, "Director," 320-3, "Factors in Determination of Lowest and Best Bidder; Breach by Contractor," 320-5, "Apprenticeship Requirements," 320-7, "Pre-Apprenticeship Training Fund," of Chapter 320 "Compliance Guidelines for Construction Contracts Issued by the Department of Sewers," for the purpose of revising apprenticeship requirements and contract compliance guidelines applicable to certain City construction contracts, and extending those requirements and guidelines to certain construction contracts entered into by Greater Cincinnati Water Works and the stormwater management utility division; and further **MODIFYING** the provisions of Title III, "Financial, Personnel, Procurement and Real Property Procedures," of the Cincinnati Municipal Code by enacting new Sections 320-1-A1, "Apprenticeship Program," 320-1-P2, "Primary Apprenticeable Occupation," 320-1-R, "Registration Entity," and 320-1-S, "Specialized Trade," of Chapter 320 "Compliance Guidelines for Construction Contracts Issued by the Department of Sewers," for the purpose of revising apprenticeship requirements and contract compliance guidelines applicable to certain City construction contracts, and extending those requirements and guidelines to certain construction contracts entered into by Greater Cincinnati Water Works and the stormwater management utility division.

WHEREAS, on June 26, 2012, Council passed Ordinance No. 282-2012 which enacted Chapter 320 of the Cincinnati Municipal Code, for the purpose of setting forth certain compliance guidelines for construction contracts related to work involving sewers and sewerage treatment facilities of the Metropolitan Sewer District of Greater Cincinnati ("MSDGC"); and

WHEREAS, since its enactment, MSDGC and Council have received feedback from contractors on ways to improve the ordinance; and

WHEREAS, in response to such feedback, Council wishes to revise the applicability of Chapter 320 to apply to construction contracts in an amount of \$400,000 or more bid by or on behalf of the MSDGC, Greater Cincinnati Water Works ("GCWW"), and the stormwater management utility division; and

WHEREAS, the City seeks to ensure that the work performed on behalf of the MSDGC, GCWW and stormwater management utility division is performed by skilled contractors and workers that share the City's commitment to safety, quality, time, and budgetary concerns; and

WHEREAS, there is a projected shortfall of trained workers for work to be performed on behalf of MSDGC, GCWW, and the stormwater management utility division between 2014 and 2020, as documented by the *Cincinnati Enquirer* on March 12, 2013; and

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WHEREAS, Council understands that the highest levels of safety and quality of work are maintained by ensuring that all contractors participate in industry-recognized training with a proven record of success; and

WHEREAS, Council also wishes to revise apprenticeship requirements applicable to such contracts; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the title of Chapter 320 and Sections 320-1-A, "Apprentice," 320-1-B1, "Bidder," 320-1-C1, "Construction Contract," 320-1-C2, "Contractor," 320-1-D, "Director," 320-3, "Factors in Determination of Lowest and Best Bidder; Breach by Contractor," 320-5, "Apprenticeship Requirements," 320-7, "Pre-Apprenticeship Training Fund," 320-7, "Pre-Apprenticeship Training Fund," of Chapter 320 "Compliance Guidelines for Construction Contracts Issued by the Department of Sewers," of the Cincinnati Municipal Code are hereby amended to read as follows:

**Chapter 320 - COMPLIANCE GUIDELINES FOR CONSTRUCTION  
CONTRACTS ISSUED BY WATER WORKS AND THE  
DEPARTMENT OF SEWERS**

**Sec. 320-1-A. – Apprenticeable Occupation.**

~~"Apprentice" shall mean an employee who is enrolled in a bona fide apprenticeship program that has been certified by the Ohio apprenticeship council and/or the United States Federal Department of Labor, or its successor organization, and that has graduated apprentices annually for at least the past five (5) years.~~

"Apprenticeable Occupation" means one which:

- (a) Is customarily learned in a practical way through a structured, systematic program of supervised training on the job;
- (b) Involves manual, mechanical, and/or technical skills applicable in like occupations throughout an industry;
- (c) Requires two thousand or more hours of work experience to learn;
- (d) Requires related instruction to supplement the on-the-job experience training;
- (e) Is clearly identified and commonly recognized or accepted throughout an industry; and

- (f) Is recognized by the registration entity and/or the US office of apprenticeship as meeting the foregoing five criteria.

**Sec. 320-1-B1. – Bidder.**

“Bidder” shall mean an individual, partnership, corporation or other entity that ~~has posted over \$350,000 in gross revenues over any of the three (3) preceding years and that responds to the city’s “Invitation to Bid” for a construction contract.~~

**Sec. 320-1-C1. - Construction Contract.**

~~“Construction Contract” means all written agreements~~ any agreement whereby the city, ~~water works, the metropolitan sewer district, or the stormwater management utility division~~ is committed to expend or does expend funds or other resources, or federal grant opportunities, in an amount of \$400,000 or more, as determined at the time the contract is executed, for any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition of any public improvement—the erection, rehabilitation, improvement, alteration, conversion, extension, demolition or repair of improvements to sewers and sewerage treatment facilities of the MSDGC, or to facilities used by the water works in the provision of water service, and includes the supervision, inspection, and other on-site functions incidental to construction, but does not include professional services. “Construction Contract” does not include any (1) contracts that have already been put out to bid as of where an invitation to bid is released prior to the effective date of this law; (2) contracts where an invitation to bid is issued by the city on behalf of one of its departments other than water works, the metropolitan sewer district, or the stormwater management utility division; (3) contracts where application of any of the requirements of this chapter is prohibited by or in conflict with federal or state law or the terms of federal or state grants applicable to the contract; (4) contracts exclusively for the purchase of materials and/or equipment; or (5) any contracts that are part of Project Labor Agreements in existence on the effective date of this law; or (6) contracts exclusively for the procurement of a specialized construction, as defined in Section 320-1-S.

**Sec. 320-1-C2. – Contractor.**

“Contractor” means any person or company that ~~has posted over \$350,000 in gross revenues over any of the three (3) preceding tax years and has been awarded entered into a Construction Contract from with the City under CMC Section 321-37.~~

**Sec. 320-1-D. – Director.**

“Director” means the director of the MSDGC or the director of water works.

**Section 320-3. – Factors in Determination of Lowest and Best Bidder; Breach by Contractor.**

Where not otherwise prohibited by or in conflict with federal, state, or local law or the terms of federal or state grants, every construction contract that goes out to bid after the effective date of this law shall require the bidder to make the following certifications or disclose the following specified information within ten (10) days after the bid opening. Failure of a bidder ~~or contractor~~ to affirmatively certify any one~~comply with any or all~~ of the following criteria or to provide any of the requested information or documentation, as determined by the city, ~~shall may~~ constitute ~~either (1) evidence of the bid to not be lowest and best, or (2) Failure of a contractor to comply with any of its certifications to constitute~~, during contract performance, shall constitute a material breach and may subject the contractor to all remedies available to the city or to the MSDGC at law, including, but not limited to, disqualification of the bidder from bidding on current or future contracts, suspension of payments to the contractor under the construction contract, and termination for cause. In the determination of whether a bidder is lowest and best, the factors below shall be considered in addition to any other factors permitted to be considered pursuant to CMC Section 321-37. The requirements of this section are intended to be additional to the requirements under CMC Chapter 321 and nothing in this section shall be construed to waive or take the place of the requirements and procedures set forth in CMC Chapter 321.

- (a) ~~The bidder shall certify that it will comply with, and shall cause all subcontractors to comply with, Ohio's Prevailing Wage Law, Ohio Revised Code sections 4115.03 through 4115.16, and Ohio Administrative Code sections 4101:9-4-01 through 4101:9-4-28. Language indicating the subcontractor's agreement to comply with Ohio's Prevailing Wage Law shall be included in the contract between the contractor and subcontractor(s).~~ The bidder shall also disclose any and all violations by the bidder and any allegations of violation made against the bidder regarding the prevailing wage law or any other state or federal labor law, including but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies or unfair labor practices within the past five (5) years.
- (b) The bidder shall certify ~~that~~ whether it will employ supervisory personnel on the project who are qualified to supervise those employees who report to them. The bidder shall also certify ~~that whether~~ its supervisory personnel on the project have any license or licenses required by law.
- (c) The bidder shall ~~certify that it is not currently debarred from bidding on the construction contract, and shall with its bid~~ provide a list of every occasion on which it has been debarred by any state or federal public entity. For purposes of this paragraph, "debarred" means exclusion from performing local, state or federal construction contracts ~~because of a~~



~~violation of the Fair Labor Standards Act and/or any state or federal prevailing wage law where all appeals have been exhausted.~~

- (d) The bidder shall certify whether ~~that it, as well as its subcontractor(s), requires its workers to complete a 30-hour safety program that complies with standards established by the Occupational Safety and Health Administration (OSHA). The bidder shall further certify that it requires~~ any individual or subcontractor performing any work under the construction contract ~~to have~~ has completed at least ~~sixteen (16)~~ ten (10) hours of the required Occupational Safety and Health Administration (OSHA)-compliant safety program, and will provide evidence of such upon request. The bidder with its bid shall identify all citations issued to it by OSHA within the previous three (3) years. Bidders shall also provide an explanation of the disposition of the citations, including if it was withdrawn. Bidder shall provide the terms of all settlements or if it was adjudicated, the bidder shall provide the outcome.
- (e) Each bidder and subcontractor shall certify ~~that~~ whether it meets one of the following:
- (1) It is in compliance with Ohio's Drug-Free Workplace requirements, pursuant to Ohio Administrative Code § 4123-17-53; or
  - (2) It provides a drug-free workplace by sponsoring and implementing a program approved by the Ohio Bureau of Workers' Compensation; or
  - (3) It provides a drug-free workplace by sponsoring and implementing or participating in a program which provides for drug testing and its personnel working under the construction contract are subject to the program.

The contractor shall provide a copy of its substance abuse policy or evidence thereof upon request.

- (f) Any bidder or subcontractor that has an Affirmative Action Plan shall certify that it operates under an Affirmative Action Plan. The contractor shall disclose any and all violations within the previous five (5) years pertaining to unlawful intimidation or discrimination against any employee by reasons of race, creed, color, disability, sex or national origin and/or violations of any employee's civil or labor rights or equal employment opportunities.
- (g) The bidder shall certify ~~that~~ whether it has all necessary licenses required by the applicable state law and regulation to perform on the project. If any such work shall be performed by a subcontractor who has such license or

licenses, the bidder shall provide a similar certification for that subcontractor.

- (h) The bidder shall ~~certify that it has no final judgments against it that have not been satisfied at the time of award of the construction contract. The contractor shall~~ provide a list of any final judgments that have not been satisfied at the time the bid was submitted, including the outstanding amount, the total award, and the basis for the award. In addition, the contractor shall identify all contracts on which the bidder has been terminated prior to completion of the work covered by the contract.
- (i) Each bidder shall certify ~~that whether~~ for any prime construction contract, it ~~will~~ agrees not to subcontract more than seventy-five per cent (75%) of the bid amount for the construction contract. For any work that it will subcontract, the bidder shall identify said work.
- (j) Unless otherwise agreed to in a collective bargaining agreement, the bidder shall certify ~~that whether~~ it provides, or contributes to, a health care plan for those employees working on the project and shall provide a copy of the health plan upon request. The contributions toward a health care plan must be part of the employee's regular compensation, and not merely part of the employee's compensation during the period of time for which the employee is performing work on the project. The certification requested by requirements of this subsection shall not apply to a bidder or contractor that has gross revenues of \$2,000,000.00 or less over any of the three (3) preceding tax years, as demonstrated by the bidder's or contractor's tax returns.
- (k) Unless otherwise agreed to in a collective bargaining agreement, the bidder shall certify ~~that whether~~ it contributes to an employee pension or retirement program, including, but not limited to, a 401K, a defined benefit plan, or similar plan, for its field employees working on the project and shall provide a copy of the plan upon request. The contributions toward a pension or retirement program must be a part of the employee's regular compensation, and not merely part of the employee's compensation during the period of time for which the employee is performing work on the project. The certification requested by requirements of this subsection shall not apply to a bidder or contractor that has gross revenues of \$2,000,000.00 or less over any of the three (3) preceding tax years, as demonstrated by the bidder's or contractor's tax returns.
- (l) The bidder shall provide its Experience Modification Rating.

- (m) The bidder shall disclose any criminal convictions or criminal indictments involving the bidder, its officers, directors, owners and/or managerial employees within the past five (5) years.
- (n) The bidder shall disclose any litigation (including copies of pleadings) in which the bidder has been named as a defendant or third party defendant in an action involving a claim for personal injury or wrongful death arising from performance of work in which it has been engaged within the previous five (5) years.
- (o) The bidder shall disclose and provide a description of any projects within the previous five years that the bidder was not awarded a contract by a public entity, the reasons given by the public entity, together with an explanation thereof.

**Sec. 320-5. – Apprenticeship Requirements.**

Where not otherwise prohibited by or in conflict with federal, state or local law or the terms of federal or state grants applicable to the construction contract, eEach bidder shall certify that:

- (a) For the duration of the project, T~~he bidder and its subcontractors will maintain or participate in an apprenticeship program for the primary apprenticeable occupation on the project; and that has graduated apprentices annually over the last five years and is registered by the Ohio State Apprenticeship Council and/or the United States Federal Department of Labor, or its successor organization. A bidder and its subcontractors shall also submit their apprenticeship agreements and documentation certified by the Ohio State Apprenticeship Council and/or the United States Federal Department of Labor, or its successor organization, demonstrating that the program has graduated apprentices annually for at least the last five years; and~~
- (b) The bidder will employ apprentices at a ratio of at least 20%, employing one (1) apprentices for every four (4) journeypersons. For the duration of the project, the bidder's subcontractor(s) who perform work in the primary apprenticeable occupation for the project will maintain or participate in an apprenticeship program for that primary apprenticeable occupation; however, this subsection shall not apply to a subcontractor that is a MSDGC-registered small business enterprise or that is a small business enterprise certified by the city as set forth in CMC Chapter 323, if the value of the subcontract with that subcontractor is under \$250,000, including labor and materials, at the time the subcontract is executed.

Prior to executing a construction contract, the director shall require the bidder to produce documentation relating to the requirements of subsection (a) above. Such documentation shall include the following information regarding the apprenticeship



program the bidder plans to maintain or participate in during the project: the occupation code, apprentice identification number, and indenture date for at least one apprentice that has graduated from the apprenticeship program for each of the past 5 years. Such documentation shall be in a form as provided by the applicable registration entity. Bidder shall supply the same documentation described above for bidder's subcontractor(s) under subsection (b) of this section, as soon as practicable after the bidder has identified the subcontractor(s) for the project and prior to the subcontractor(s) beginning work on the project. If bidder requests an exemption for a subcontractor under subsection (b), bidder must supply documentation that shows that the value of the executed subcontract with that subcontractor is under \$250,000 and that the subcontractor is an MSDGC-registered small business enterprise or a small business enterprise certified by the city as set forth in CMC Chapter 323. If requested, bidder shall also provide documentation supporting bidder's determination of the primary apprenticeable occupation.

A construction contract shall not be executed with a~~A~~ bidder who fails to make the certifications and/or provide the documentation required by this section ~~shall not be awarded a construction contract~~. Failure of a contractor to comply with the requirements of this section during the performance of the construction contract shall constitute a material breach and may subject the contractor to all remedies available to the city at law, including, but not limited to, disqualification of the ~~bidder~~contractor from bidding on current or future contracts, suspension of payments to the contractor under the construction contract, and termination for cause.

#### **Sec. 320-7. – Pre-Apprenticeship Training Fund.**

Contractors shall pay \$.10 per hour per worker into MSDGC Fund 701 for the purpose of funding qualified pre-apprenticeship programs that will create a pipeline of opportunities from recruitment to placement to retention. This payment shall go into MSDGC Fund 701 where the project is managed by MSDGC and into water works Fund 101 where the project is managed by water works. Failure of a contractor to make the payment required under this section shall constitute a material breach and may subject the contractor to all remedies available to the city at law, including, but not limited to, disqualification of the contractor from bidding on current or future contracts, suspension of payments to the contractor under the construction contract, and termination for cause. The payments required under this section shall not be taken from the fringe benefits of the contractor's employees. Notwithstanding any requirement to the contrary in CMC Chapter 321, any pre-apprenticeship program that receives funding through this section shall be selected through the competitive proposals process applicable to services contracts described in CMC Section 321-51.

To be designated as a qualified pre-apprenticeship training program, the program will:

- (a) Provide health and safety training that has received OSHA 10, CPR and First Aid certification;
- (b) Have a least five (5) defined partnerships with apprenticeship programs;

- (c) Ensure that a majority of its trainees are women, people of color, residents of low-income communities, ex-offenders, and/or veterans;
- (d) Offer mentoring, follow-up monitoring and case management support to ensure retention of participants in the program; and
- (e) Demonstrate that it graduates and places trainees from low-income or minority communities in construction careers; and
- (f) Provide documentation demonstrating that it has been recognized as a pre-apprenticeship training program by a registration entity; and
- (g) Have articulated credits through a community college or four-year program and show proof of such through an articulation agreement.

Section 2. That existing Sections 320-1-A, "Apprentice," 320-1-B1, "Bidder," 320-1-C1, "Construction Contract," 320-1-C2, "Contractor," 320-1-D, "Director," 320-3, "Factors in Determination of Lowest and Best Bidder; Breach by Contractor," 320-5, "Apprenticeship Requirements," 320-7, "Pre-Apprenticeship Training Fund," 320-7, "Pre-Apprenticeship Training Fund," of Chapter 320 "Compliance Guidelines for Construction Contracts Issued by the Department of Sewers," of the Cincinnati Municipal Code are hereby repealed.

Section 3. That Sections 320-1-A1, "Apprenticeship Program," 320-1-P2, "Primary Apprenticeable Occupation," 320-1-R, "Registration Entity," and 320-1-S, "Specialized Trade," of the Cincinnati Municipal Code are hereby enacted to read as follows:

**Sec. 320-1-A1. – Apprenticeship Program.**

"Apprenticeship program" means a program that (1) is registered by the Ohio Apprenticeship Council and/or the United States Federal Department of Labor, or its successor organization; (2) that combines on-the-job training and related technical instruction, according to the specifications established by Title 29 of the Code of Federal Regulations (CFR), parts 29 and 30, and further established in Ohio under division 5101:11 of the Ohio Administrative Code; and (3) that has graduated apprentices annually in the primary apprenticeable occupation on the project, as defined in Section 320-1-P2, for at least the previous five (5) years.

**320-1-P2. – Primary Apprenticeable Occupation.**

"Primary Apprenticeable Occupation" shall mean the apprenticeable occupation that comprises the largest number of hours on the project, as determined by the number of construction hours expected to be performed in that apprenticeable occupation at the time the construction contract is executed.

**320-1-R. – Registration Entity.**

“Registration Entity” shall mean the Ohio State Apprenticeship Council or the United States Department of Labor.

**320-1-S. – Specialized Construction.**

“Specialized Construction” shall mean a construction method or material requires a highly technical expertise which can be provided only by a limited pool of specialized contractors for a capital project that comprises 4% or less of the capital expenditures from the previous fiscal year or capital program budget year of the applicable MSDGC, water works, or stormwater management utility capital program.

Section 4. That this ordinance shall take effect and be in force from and after 90 days after passage.

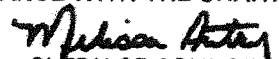
Passed: May 1, 2013

  
Via Mayor

Attest:   
Clerk

Additions underlined. Deletions stricken through.

I HEREBY CERTIFY THAT ORDINANCE No. 114-2013  
WAS PUBLISHED IN THE CITY BULLETIN  
IN ACCORDANCE WITH THE CHARTER ON 5-14-2013

  
CLERK OF COUNCIL